

## **Court decision may have big impact on drilling**

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ANDREW MAYKUTH, *INQUIRER STAFF WRITER*

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Three weeks after the Pennsylvania Supreme Court threw out key sections of the state's oil and gas law, legal experts remain at odds over how much of a wreckage the court made of Gov. Corbett's signature legislation.

Lawyers acting on behalf of two state agencies asked the court on Jan. 2 to reconsider its decision, which the governor's general counsel called a "stunning departure" from past practices because the court had made "sweeping factual findings" that had not even been argued in the lower courts.

The ruling struck down provisions in the 2012 law that had stripped municipalities of the power to determine where gas-drilling activity could occur within their boundaries.

Corbett and the gas industry sought the law to sidestep potentially hundreds of different municipal zoning laws, including some that appeared to be designed to stymie drilling altogether.

Legal experts say the ruling doesn't mean local governments can block drilling now.

The governor's office went so far last week as to imply that the court's ruling could actually weaken environmental protections. He implored Marcellus Shale gas producers to abide by measures that were invalidated in the law, formally known as Act 13.

"This action, which could imperil our water quality, is simply unacceptable," Corbett said in a news release.

Most experts say insinuations that the court's ruling will lead to a frenzy of unregulated drilling overstate the ruling's impact.

"No one views the court's decision as a way to circumvent environmental provisions," said David Spigelmyer, president of the Marcellus Shale Coalition, the trade group that represents nearly all of the state's shale-gas producers.

But the decision's ramifications are still huge.

Local governments argued that drilling was an industrial activity that should be subject to reasonable zoning. That view was upheld.

The Supreme Court sent the case back to the lower Commonwealth Court to decide whether the provisions the top court ruled invalid could be individually severed from the law, or whether the whole act is unconstitutional. No new hearing is scheduled.

## **More than sought**

The plaintiffs who brought the case did not seek to overturn the entire law, said Jordan B. Yeager, a Doylestown environmental lawyer who represented several municipalities.

"That's not something we asked for," he said.

Even if the whole act were thrown out - including provisions that created the impact fee that generates about \$200 million a year in state revenue - old laws governing oil and gas production would still be on the books, said Ross H. Pifer, a Penn State law professor and Marcellus Shale expert.

"I think it would be a mistake for municipalities to do whatever they want to do with oil and gas," Pifer said. "There still are restrictions."

For the short term, the ruling has created much uncertainty. Anti-drilling activists are likely to pressure the 60 percent of Pennsylvania municipalities that don't have zoning laws to enact them.

"Where this goes is up to the municipalities," said Blaine A. Lucas, a gas-industry lawyer for the Pittsburgh law firm of Babst Calland. "How are they going to react to this? To be more restrictive?"

Chief Justice Ronald D. Castille's opinion said the Act 13 zoning restrictions violated the state's duties to protect public natural resources under the "Environmental Rights Amendment," an Earth Day-era law that guarantees Pennsylvanians' access to clean air and water.

"Previously, this amendment had been given little force or substance," wrote Jeffrey J. Norton, an Eckert Seamans energy-law expert. "Under Justice Castille's opinion, that is all changed."

## **The gamut**

Experts anticipate a range of new legal challenges based on alleged violations of the amendment, formally known as Article 1, Section 27. The challenges could run the gamut - mining, landfills, emissions permits.

"The implications of this decision go well beyond natural gas," said Michael L. Krancer, Corbett's former environmental protection secretary who now leads Blank Rome L.L.P.'s energy practice. "We'll be unpacking this for a decade."

The court's ruling could have immediate implications for the Pennsylvania Environmental Defense Foundation (PEDF), which has sued the state over the practice of channeling the wealth generated from gas leasing into the state's general fund, rather than for conservation purposes, as in the past. PEDF's chief argument is that the practice violates the Environmental Amendment.

Only three of the six justices who heard the case cited the Environmental Amendment as the foundation of their decision - a fourth justice held that the invalidated provisions violated substantive due process. So the "plurality opinion" doesn't carry the same as a majority of the

seven-member court.

John C. Dernbach, a Widener University law professor whose writings on the Environmental Amendment were cited in the Castille opinion, said the court's ruling was a "huge boost" to the law.

But he is concerned that the victory may not be durable. Castille is set to retire in a year and probably won't hear any subsequent challenges.

"What some people worry about, including me, is that this is sort of a one-off thing," Dernbach said.

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## **Split vote stymies Pinelands pipeline**

Edward Colimore, *Inquirer Staff Writer*

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Each side thought it had enough votes.

But after months of heated debate, the New Jersey Pinelands Commission was split Friday over a proposed gas pipeline through the environmentally sensitive Pinelands - an outcome that ultimately blocks a project supported by the Christie administration.

The commissioners - in a room in Pemberton Township crowded with about 100 vocal, sign-carrying pipeline opponents and supporters - explained their views, then cast seven votes for and seven against a variance that would have allowed work to proceed.

Two commissioners were absent and voted by phone. A third, Edward Lloyd, whom the Attorney General's Office had asked to withdraw, citing a conflict of interest, recused himself.

## **The Pulse: The politicization of the weather**

Michael Smerconish, *Inquirer Columnist*

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The time and temperature sign at 49th Street and the Avenue of the Americas in midtown Manhattan hit 57 degrees when I walked by Monday. By the overnight into Tuesday, New York City was reeling in 12-degree temperatures.

While cold weather engulfed the eastern United States, with the freeze line extending to Tampa, I was wondering how the frigid weather experienced by 180 million Americans could support

the global-warming model for climate change. When I asked Jennifer Francis, a climate scientist at Rutgers University, to explain the connection, she offered a compelling view (which I will share in a moment), but our conversation left me wondering how her profession ever became subject to partisan divide.

I get that Republicans and Democrats disagree on such things as whether to extend emergency unemployment compensation or raise the minimum wage. On such issues, the parties are guided by a basic economic outlook. Republicans pride themselves on rewarding individual initiative and preserving the ability of small businesses to run themselves without government interference. The Democrats' aim is to preserve the safety net for the most needy and argue for an honest wage. But why does partisanship extend to other areas without regard for symmetry and logic?

Why, for example, is it likely that a person who opposes the extension of unemployment benefits and raising of the minimum wage probably champions Second Amendment rights and supports the death penalty? Similarly, I'll bet most of those who'd extend unemployment and boost the minimum wage are pro-choice and once opposed the surge in Iraq. My suspicion is that when it comes to confounding matters of public policy, some abstain by picking sides based on our comfort level with possible teammates, causing even matters such as climate change to be viewed as a political Rorschach test.

Last week, Rush Limbaugh made clear he isn't buying into the "polar vortex." Donald Trump went on Fox and referenced "this whole global-warming hoax," poking fun at the "global-warming scientists" and their frozen ship at the South Pole. He also managed to work in a dig at former Vice President Al Gore. ("He's the one who's the big proponent.")

From the left, Jon Stewart was quick to respond by lampooning a number of Fox personalities and their failure to distinguish between opinion and fact. Stephen Colbert did likewise. Even Al Roker got into the action. After hammering Limbaugh on Twitter, he went on the *Today* show to address the charge that the polar vortex was "some left-wing media conspiracy."

When I asked Francis how her area of expertise became such cannon fodder, she was quick to point out that not all Republicans are disbelieving of the perils posed by greenhouse-gas emissions. "I don't think it's a clean political slice down the line," she said.

"But that said, in certain parties there's more business interest related to fossil-fuel industries and, of course, if we decide we don't want to use fossil fuels anymore, then they stand to lose a lot of money, so there's a big financial stake there," Francis said. "I think there may also be some

religious component to it, and some people believe that humans could never do something like this, and perhaps God would not allow us to do something like this, so there are different beliefs out there that come into play that are difficult to change people's minds when they're so ingrained."

I weighed her answer just as Pew Research released a survey that showed 60 percent of Americans believe in evolution, while a third do not. That latter number has remained constant in the last few years. What's changed is the gap between Republicans and Democrats. According to Pew, "just five years ago, 54 percent of Republicans and 64 percent of Democrats said humans have evolved over time, a difference of 10 percentage points. Today, 43 percent of Republicans and 67 percent of Democrats say humans have evolved, a 24-point gap."

No surprise, then, that there's strong suspicion about climate change when only 43 percent of the GOP believe in evolution. And if my theory about choosing sides based on teammates is correct, I'll bet the doubts began with Gore's championing of the issue.

As for why the extreme weather comports with her model of climate change, Francis reminded me that right now, Alaska is warmer than Atlanta, the former having had a very warm month of December. Meanwhile, California is experiencing one of its driest years ever. Across the pond, the United Kingdom is being pounded by storm after storm, while Scandinavia is having one of its warmest winters. Francis sees this as all related.

"So the connection to climate change, we think, is that what we're seeing is the jet stream taking these kind of very wild swings north and south more often now," Francis said. "And we believe that's related to the fact that the Arctic is warming so much faster than the rest of the country. . . . When we make this difference in temperature between the Arctic and areas farther south smaller, which is what is happening as the Arctic warms so fast, the jet stream responds to this by becoming more wavy, so we think this is at least one factor that's connected to the increasing frequency of these kinds of extreme weather events, all around the Northern Hemisphere."

## **Chemical spill brings W.Va. capital to standstill**

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CHARLESTON, W.Va. (AP) - A chemical spill left the water for 300,000 people in and around West Virginia's capital city stained blue-green and smelling like licorice, with officials saying Friday it was unclear when it might be safe again to even take showers and do laundry.

Federal authorities began investigating how the foaming agent escaped a chemical plant and seeped into the Elk River. Just how much of the chemical leaked into the river was not yet known.

Officials are working with the company that makes the chemical to determine how much can be in the water without it posing harm to residents, said West Virginia American Water president Jeff McIntyre.

"We don't know that the water's not safe. But I can't say that it is safe," McIntyre said Friday. For now, there is no way to treat the tainted water aside from flushing the system until it's in low-enough concentrations to be safe, a process that could take days.

Officials and experts said the chemical, even in its most concentrated form, isn't deadly. However, people across nine counties were told they shouldn't even wash their clothes in affected water, as the compound can cause symptoms ranging from skin irritation and rashes to vomiting and diarrhea.

No more than six people have been brought into emergency rooms with symptoms that may stem from the chemical, and none was in serious or critical condition, said State Department of Health & Human Resources Secretary Karen L. Bowling.

The company where the leak occurred, Freedom Industries, discovered Thursday morning about 10:30 a.m. that the chemical was leaking from the bottom of a storage tank, said its president, Gary Southern. Southern said the company worked all day and through the night to remove the chemical from the site and take it elsewhere. Vacuum trucks were used to remove the chemical from the ground at the site.

"We have mitigated the risk, we believe, in terms of further material leaving this facility," he said.

Southern said he didn't think the chemical posed a public danger. He also said the company didn't know how much leaked.

He also said more than once that it had been a "long day" for him and others at the company. After six minutes, Southern attempted to leave the news conference but was asked more questions.

"Look guys. It has been an extremely long day," Southern said. "I have trouble talking at the moment. I would appreciate if we could wrap this thing up."

The news conference ended a few minutes after that.

State officials started investigating Thursday when people complained about an odor coming from near the company's river terminal. Inspectors found a leaking above-ground tank at the site just after 11 a.m. and realized that no one was trying to contain the spill, according to officials at the Department of Environmental Protection. The chemical was seeping through a containment dike, a backup intended to catch spills.

State environmental officials ordered the company late Friday to start removing chemicals from its 14 above-ground storage tanks within 24 hours. Authorities said the chemicals must be stored somewhere that has a working containment system. Within a day, the company must also submit a corrective action plan that includes steps to clean up contaminated soil and groundwater.

The spill brought West Virginia's most populous city and nearby areas to a virtual standstill, closing schools and offices and even forcing the Legislature to cancel its business for the day. Officials focused on getting water to people who needed it, particularly the elderly and disabled.

"If you are low on bottled water, don't panic because help is on the way," Gov. Earl Ray Tomblin said at a news conference Friday afternoon. The governor said there was no shortage of bottled water, and that officials were working to get water to those who need it. At least one charity was collecting donations of bottled water, baby wipes, plastic utensils and other items for people unable to use tap water.

The Federal Emergency Management Agency also planned to deliver more than a million liters of water from nearby Maryland. Several companies were sending bottled water and other supplies, including Pepsi and the Coca-Cola Co., Tomblin said.

However, it appeared that some level of panic already had set in to some degree. At the Kroger grocery store in the shadow of a DuPont plant along the Kanawha River, people scrambled in the aisles to find bottled water, only to learn the store had been out since early Friday.

Robert Stiver was unable to find water at that store after trying at least a dozen others in the area and worried about how he'd make sure his cats had drinkable water. The water at his home had a blue tint and smelled like licorice, he said.

"I'm lucky. I can get out and look for water. But what about the elderly? They can't get out. They need someone to help them," he said.

That's what 59-year-old Dan Scott was doing: Taking care of his 81-year-old mother, Bonnie Wireman, and others in the area.

"She takes everything to heart. She forgot a few times and stuck her hand in the kitchen sink. When she realized what she did, she took out alcohol and washed her hands. Scrubbed them. She was really scared," he said.

Inside Kroger, there were signs that the chemical spills had affected business. Anything that used water - from the deli counter to the produce section - was either closed or had a limited supply.

Outside the restrooms, a handmade sign told the story: Because of a chemical spill in the Elk River, the store was advising people not to use the water fountain. The bathroom sinks were wrapped in plastic.

Health officials were even cracking down on bars, telling owners they could serve only bottled beer and that they had to have an outside water supply for hand washing. Drinks couldn't be served even in plastic cups and sanitizers weren't enough for disinfecting hands.

Freedom Industries was ordered to stop storing chemicals in areas where they could flow into the containment dike that failed in Thursday's leak, said state Department of Environmental Protection spokesman Tom Aluisse.

The tank that leaked holds at least 40,000 gallons, Aluisse said, though officials believe no more than 5,000 gallons leaked from the tank. Some of that was contained before escaping into the river, he said.

The company was already cited for causing air pollution stemming from the odor first reported Thursday, Aluisse said.

The primary component in the foaming agent that leaked is the chemical 4-methylcyclohexane methanol. The agent is mixed with ground-up coal to separate it from soil and rock particles, said Paul Ziemkiewicz, director of the West Virginia Water Research Institute. After the coal is cleansed, the leftover mixtures of chemicals and mud are piped to slurry ponds, where much of the chemical mixture is stored until re-used.

The chemical is water-soluble, meaning it cannot be removed with surface booms that are sometimes effective in capturing spilled oil.

The chemical evaporates easily, which explains the smell that many people reported, said Capt. Larry Cseh, environmental health scientist with the U.S. Agency for Toxic Substances and Disease Registry.

The West Virginia National Guard has been running hourly tests on the chemical's concentration since Thursday night. A safe level is 1 part per million. The level has dropped from 2 to 1.7 parts per million, said Maj. Gen. James A. Hoyer, Adjutant General of West Virginia.

At 0.1 parts per million, the licorice smell and blue-green tint would disappear from the water, Hoyer said.

Even at its current concentrations, however, the chemical is unlikely to cause any serious harm, Ziemkiewicz said.

"You'd have to drink something like 1,700 gallons of water to even approach a lethal dose," he said. If a person drank a glass or two of tainted water, "I would be astonished if that caused any serious problems."

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Associated Press researchers Rhonda Shafner and Monika Mathur in New York and AP writers Mitch Weiss, John Raby and Pam Ramsey in Charleston; Ray Henry in Atlanta; and John Flesher in Traverse City, Mich., contributed to this report.

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## Despite leak, firm support

**Residents of the W. Va. area hit by a chemical spill are angry, but don't want to lose the factories.**

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MITCH WEISS AND BRENDAN FARRINGTON, ASSOCIATED PRESS

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DRY BRANCH, W.Va. - For Bonnie Wireman, the white plastic bag covering her kitchen faucet is a reminder that she can't drink the water.

The 81-year-old woman placed it there after forgetting several times the tap water was tainted after a coal processing chemical leaked into the area's water supply. Every time she turned on the water, she'd quickly stop and clean her hands with peroxide - just to make sure she was safe.

The widow of a coal miner, Wireman is frustrated about the chemical spill that's deprived 300,000 West Virginians of clean tap water for four days: "I'm really angry."

But as quickly as she said it, she wanted to make one thing clear: She didn't blame the coal or chemical industries for the spill.

"I hope this doesn't hurt coal," said Wireman, who lives in an area known around the state as Chemical Valley because of all the plants nearby. "Too many West Virginians depend on coal and chemicals. We need those jobs."

And that's the dilemma for many West Virginians: The industries provide thousands of well paying jobs but also pose risks for the communities surrounding them, such as the chemical spill or coal mine disasters. The current emergency began Thursday after a foaming agent used in coal processing escaped from a Freedom Industries plant in Charleston and seeped into the Elk River. Since then, residents have been ordered not to use tap water for anything but flushing toilets.

West Virginia is a picturesque, mountainous state, with deep rivers and streams that cut through lush valleys. But along the twisting, rural roads there are signs of the state's industrial past and present: Chemical plant storage tanks rise from the valley floor. Coal mines - with heavy equipment and steel structures used to extract and then transport the fuel - are part of the rural landscape. White plumes of smoke drifting from factories offer a stark contrast to the state's natural beauty.

"You won't find many people in these parts who are against these industries. But we have to do a better job of regulating them," said Wireman's son, Danny Scott, 59, a retired General Electric worker who has been helping take care of his mother. "The state has a lot to offer. We don't want to destroy it."

West Virginia is the second-largest coal producing state behind Wyoming, with 538 mines and 26,619 people. The state has about 150 chemical companies that employ 12,000 workers.

Read more at

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